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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/478,321 01/06/00 DAHLSTROM

D LL11.12-0050

EXAMINER

IM22/0306

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PADEN, C

ART UNIT

PAPER NUMBER

3

1761

DATE MAILED:

03/06/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/478,321

Applicant(s)

DAHLSTROM ET AL.

Examiner

Carolyn Paden

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-42 and 60-69 is/are allowed.
- 6) ☒ Claim(s) 1-7, 11, 12, 21, 22, 25-28, 31, 43-59, 70-73 and 80 is/are rejected.
- 7) ☒ Claim(s) 8-10, 13-20, 23, 24, 29, 30 and 75-79 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5, 11, 12, 21, 22, 25-27, 70-72 and 80 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Barz et al (5,200,216). See abstract, column 1, lines 31-50; column 8, lines 9-24; column 9, lines 52-54, Table 2, column 10, line 16.

Claims 32-42 and 60-69 are allowed.

Claims 2, 43 and 74 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not seen that any and all GRAS substances would be useful in preparing the cheese product of the claims but only the specific GRAS ingredients set forth at page 7, lines 11-26. The recitation GRAS is indefinite because of the very long list of ingredients that is included on the GRAS list.

Claims 8-10, 13-20, 23, 24, 29, 30 and 75-79 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 43 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

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Claims 2 and 74 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6, 7, 28, 31, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barz (5,200,216).

Barz discloses a method of making an acceptable mozzarella cheese using the process as set forth at column 1, lines 31-50. Claims 6 and 7 appear to differ from Barz in the type of milk that is selected. Barz selects a milk with a particular fat content. But mozzarella cheese traditionally contains water buffalo milk. To adjust the protein and fat ingredients of cows milk by including various milk ingredients to prepare a milk more like water buffalo milk would have been an obvious way of preparing a cheese product using starting materials more like traditional mozzarella. Claim 28 appears to differ from Barz in the size and shape of the cheese product. Change in size and shape of a cheese product does not alone constitute unobviousness. Claims 31 and 80 are directed to the texture of the product but Mozzarella is expected to be stringy and thus no unobvious or unexpected result is seen from this description. It would have been

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obvious to one of ordinary skill in the art to modify the ingredients and the shape of the cheese of Barz in order to prepare an optimized mozzarella cheese product.

Claim 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barz as applied to claims 1, 3-5, 11, 12, 21, 22, 25-27, 70-72 and 80 above, and further in view of Fox.

The claims appear to differ from Barz in the recital of the pH of the drained curd. Fox teaches that a pH of 5.2 to 5.4 allows for optimum stretchability of Mozzarella in biologically acidified cheese. Thus it would have been obvious to one of ordinary skill in the art to adjust the pH of the cheese in order to permit optimum mechanical working of the curd.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CAROLYN PADEN 3-1-01
PRIMARY EXAMINER
GROUP 1300 1761